

1992

Stalboerger v. The Putter Club, Redwood Industries, Inc. and Joe B. Turpin : Brief of Appellant

Utah Court of Appeals

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Roger P. Christensen; Christensen, Jensen & Powell; Attorneys for Plaintiff/Appellee.

Gregory J. Sanders; Michael F. Skolnick; Kipp & Christian; Attorneys for Defendant/Appellant.

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ANDREW JOHN STALBOERGER,
Plaintiff/Appellee,

THE PUTTER CLUB,

Defendant/Appellant,

REDWOOD INDUSTRIES, INC. and
JOE B. TURPIN,

Defendants.

Case No. 920117-CA

Priority ~~16~~

APPEAL TAKEN FROM A JUDGMENT UPON JURY VERDICT
IN THE
THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY,
STATE OF UTAH,
THE HONORABLE MICHAEL R. MURPHY, PRESIDING

GREGORY J. SANDERS, ESQ.
MICHAEL F. SKOLNICK, ESQ.
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APPELLANT

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175 South West Temple, Suite 510
Salt Lake City, Utah 84101
ATTORNEYS FOR PLAINTIFF/APPELLEE

ED

NOV 13 1992

IN THE UTAH COURT OF APPEALS

ANDREW JOHN STALBOERGER,	:	
	:	
Plaintiff/Appellee,	:	
	:	Case No. 920117-CA
vs.	:	
	:	
THE PUTTER CLUB,	:	
	:	
Defendant/Appellant,	:	Priority 16
	:	
REDWOOD INDUSTRIES, INC. and	:	
JOE B. TURPIN,	:	
	:	
Defendants.	:	

ADDENDUM TO BRIEF OF APPELLANT

APPEAL TAKEN FROM A JUDGMENT UPON JURY VERDICT
IN THE
THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY,
STATE OF UTAH,
THE HONORABLE MICHAEL R. MURPHY, PRESIDING

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INTRODUCTION


Included in this Addendum are the basic documents to which references made in the Brief of Appellant. A number of citations to the record in the three relevant cases are made in the Brief and not included in the Addendum, but designated as part of the record. Also included for the court's information are the Special Verdict Form, the Judgment entered, and applicable statutes.

All of the statutes reproduced are the versions of the Utah Code Anno., 1953, as amended in effect as of the date of the accident on June 20, 1985.

All of the statutes have been reproduced from publications of the Utah Code Anno. published by the Michie Company and the Allen Smith Company.

DATED this 13th day of November, 1992.

KIPP & CHRISTIAN, P.C.



GREGORY J. SANDERS, ESQ.
MICHAEL F. SKOLNICK, ESQ.
Attorneys for Defendant/Appellant

ADDENDUM "A"

Summary of Cases

SUMMARY OF CASES

#1 Stalboerger v. Rockwood Ins. Co., Joe Turpin and Redwood Industries, Civil No. C86-494

Claims: fraud, later bad faith adjusting, negligent hiring, etc.

3rd parties: Arizona All-Claims, Utah All-Claims, Ray Summers

Case resolved by settlement with Rockwood, but consolidated case #3 proceeded to trial under this case number.

#2 Scurlock v. Turpin, Civil No. C86-985

Filed: February 5, 1986 (Judge Rokich)

Claims: Wrongful Death

Order to Show Cause issued to resolve case on July 1, 1988.

#3 Stalboerger v. The Putter Club and Joe Turpin, Civil No. C87-2830

Filed: April 24, 1987 (Judge Moffat) [Putter Club served August 17, 1988]

Claims: Wrongful death and personal injuries and emotional distress. The emotional distress and personal injury claims were abandoned by the plaintiff. The wrongful death claim went to verdict. Special damages awarded were \$237,000. General damages were \$250,000. Punitive damages were \$100,000. A credit for \$35,100 was given on the judgment for some of the money received in the July 12, 1985 settlement for a net judgment of \$551,900.

PUTTER\SUMMARY

ADDENDUM "B"

Roster of Participants

ROSTER OF PARTICIPANTS

Arizona All-Claims	Insurance adjusting firm alleged to own Utah All-Claims, Inc.
Louise Buerkle	Daughter and heir of M. Stalboerger, step-daughter of J. Stalboerger.
The Putter Club	Private liquor club located in Salt Lake City.
Redwood Industries, Inc.	Employer of J. Turpin, owner of vehicle in accident.
Rockwood Ins. Co.	Auto insurer of both Stalboerger and Redwood Industries.
Mark Scurlock	Son and heir of M. Stalboerger, step-son of J. Stalboerger.
Paul Scurlock	Son and heir of M. Stalboerger, step-son of J. Stalboerger.
John Stalboerger	Husband and heir of M. Stalboerger.
Marilyn Stalboerger	Deceased, wife to J. Stalboerger, mother to Scurlocks and Buerkle.
Ray Summers	Independent insurance adjuster for Rockwood employed by Utah All-Claims.
Utah All-Claims	Adjusting firm located in Salt Lake City.

PUTTER\ROSTER

ADDENDUM "C"

§32-11-1 and §32-7-14

CHAPTER 11

DRAM SHOP ACT

Section

32-11-1. Liability for injuries resulting from illegal sale or other distribution of intoxicating liquors — Injured person's cause of action against intoxicated person or person who provided liquor — Survival of action.

32-11-2. Immunity of state, state agencies and employees, and political subdivisions.

32-11-1. Liability for injuries resulting from illegal sale or other distribution of intoxicating liquors — Injured person's cause of action against intoxicated person or person who provided liquor — Survival of action. (1) Any person who gives, sells, or otherwise provides intoxicating liquor to another contrary to subsection 16-6-13.1 (8)(d), subsection 32-1-36.5 (1)(l), section 32-7-14 or subsection 32-7-24 (b) or (c), and thereby causes the intoxication of the other person, is liable for injuries in person, property, or means of support to any third person, or the spouse, child, or parent of that third person, resulting from the intoxication.

(2) A person who suffers an injury referred to in subsection (1) of this section, shall have a cause of action against the intoxicated person and the person who provided the intoxicating liquor in violation of subsection (1) above, or either of them.

(3) If a person having rights or liabilities under this section dies, the rights or liabilities provided by this section shall survive to or against that person's estate.

32-7-14. Sale of liquor to drunken person.—No person shall sell or supply any alcoholic beverages or permit alcoholic beverages to be sold or supplied to any person under or apparently under the influence of liquor.

ADDENDUM "D"

§78-11-7 and §78-27-42

78-11-7. Death of adult — Suit by heir or personal representative.

Except as provided in Chapter 1, of Title 35, when the death of a person not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if such person is employed by another person who is responsible for his conduct, then also against such other person. If such adult person has a guardian at the time of his death, only one action can be maintained for the injury to or death of such person, and such action may be brought by either the personal representatives of such adult deceased person, for the benefit of his heirs, or by such guardian for the benefit of the heirs as provided in the next preceding section [§ 78-11-6]. In every action under this and the next preceding section [§ 78-11-6] such damages may be given as under all the circumstances of the case may be just.

78-27-42. Release of joint tort-feasor—Reduction of injured person's claim.—A release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasors, unless the release so provides, but reduces the claim against the other tort-feasors by the greater of: (1) The amount of the consideration paid for that release; or (2) the amount or proportion by which the release provides that the total claim shall be reduced.

ADDENDUM "E"

July 12, 1985 Stalboerger Release

OF ALL CLAIMS

no contract as yet

IN WITNESS WHEREOF, I, the undersigned, do hereby certify that I have read the foregoing Release and fully understand it.

That the Undersigned, being of lawful age, for sole consideration

~~Forty eight thousand and no/100~~
 paid to ~~ANDREW JOHN STAUBERGER INDIVIDUALLY AND AS HEIR OF STAUBERGER~~
~~JOSEPH TURPIN, INDIVIDUALLY AND REDWOOD INDUSTRIES INC OF SALT LAKE CITY~~
 his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the 30
JUNE, 1985, at or near SALT LAKE CITY, SALT LAKE COUNTY, UTAH.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability before and intend merely to avoid litigation and buy their peace.

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progressive and recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the undersigned (ies) wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.

The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Witnessed, sealed and delivered this 12 day of JUNE, 1985

CAUTION: READ BEFORE SIGNING BELOW

William E. Strong
 Witness
Bernie M. Strong
 Witness
 Witness

Andrew J. Halberger INDIVIDUALLY
Andrew J. Halberger AS HEIR OF
OF MARVIN STAUBERGER, DECEASED.

RECEIVED
 JUL 22 1985
 REDWOOD SERVICE CORP.

STATE OF UTAH

COUNTY OF SALT LAKE

On the _____ day of _____, 19____, before me personally appeared _____

known to be the person(s) named herein and who executed the foregoing Release and _____ acknowledged to me that

_____ voluntarily executed the same.

My term expires COPY 19____

NOTARY PUBLIC

received 3/4/86

00075A

ADDENDUM "F"

Scurlock Children Releases

RELEASE OF ALL CLAIMS

For and in consideration of the sum of Twelve Thousand Five Hundred Dollars (\$12,500) receipt of which is hereby acknowledged, I, Paul Scurlock do hereby release and forever discharge,

- (1) Joe B. Turpin, Redwood Industries, its officers, directors, employees, agents, representatives, and insurance carriers, including Rockwood Insurance Company;
- (2) any and all other joint tortfeasors, including but not limited to, Putter Club, a bar in Salt Lake City, Utah that provided alcoholic beverages to Joe B. Turpin, together with its owners, officers, directors, employees, agents, representatives and insurance carriers.

from any and all rights, claims, demands, and damages of any kind, known or unknown, existing or arising in the future, resulting from or related to an accident which occurred on or about June 20, 1985, in Salt Lake City, Utah.

In further consideration of the amount paid to settle my claims; I hereby agree ⁰²⁹⁰⁰¹⁹ to make myself available in Salt Lake City, Utah, ~~at my expense~~ at a convenient time for a deposition in the case entitled Andrew John Stalbaerger v. Rockwood Insurance Company, Redwood Industries and Joe B. Turpin, Civil No. C86-494 and I hereby acknowledge and agree that in the event Rockwood Insurance Company, by and through its insureds, Joe B. Turpin and/or Redwood Industries, elects to seek contribution from the Putter Club or any other joint tortfeasor, I hereby agree that said action can be brought and filed in my name and I further agree to cooperate in making myself available for a deposition and for trial, if necessary, and in the event I fail to so cooperate, then I agree to indemnify Joe B. Turpin and Redwood Industries to the extent of the payment paid by Rockwood Insurance Company on behalf of its insureds, Joe B. Turpin and Redwood Industries, to me.

I hereby declare and represent that in making this Release and agreement, it is understood and agreed that I rely wholly upon my own judgment, belief, and knowledge, and that provided by my legal counsel, and it is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of Joe B. Turpin and Redwood Industries, by whom liability is expressly denied.

000384

This Release contains the entire agreement between the parties and the terms of this Release are contractual and not mere recital, and the terms of this Release shall be binding upon my heirs, executors, administrators, and assigns forever.

I further state that I have read the foregoing Release and know the contents thereof, and that I sign the same as my own free act.

DATED this 25 day of April, 1988.

X Paul Scurlock
Paul Scurlock

STATE OF Florida)
~~UTAH~~) ss.
COUNTY OF Seminole)

On the 25th day of April, 1988, before me personally appeared Paul Scurlock to me known to be the person named herein and who executed the foregoing release and stated that he/she had read, understood and voluntarily executed the same.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAR. 9, 1991
BONDED THRU GENERAL INVS. UND.

Sandra C. Woodard
NOTARY PUBLIC, residing at:
313 N. Broad St.
Bushnell, FL 33513

000085

RELEASE OF ALL CLAIMS

For and in consideration of the sum of Twelve Thousand Five Hundred Dollars (\$12,500) receipt of which is hereby acknowledged, I, Mark Lee Scurlock, do hereby release and forever discharge,

- (1) Joe B. Turpin, Redwood Industries, its officers, directors, employees, agents, representatives, and insurance carriers, including Rockwood Insurance Company; and
- (2) any and all other joint tortfeasors, including but not limited to, Putter Club, a bar in Salt Lake City, Utah that provided alcoholic beverages to Joe B. Turpin, together with its owners, officers, directors, employees, agents, representatives and insurance carriers.

from any and all rights, claims, demands, and damages of any kind, known or unknown, existing or arising in the future, resulting from or related to an accident which occurred on or about June 20, 1985, in Salt Lake City, Utah.

In further consideration of the amount paid to settle my claims; I hereby agree to make myself available in Salt Lake City, Utah, at a convenient time, for a deposition in the case entitled Andrew John Stalboerger v. Rockwood Insurance Company, Redwood Industries and Joe B. Turpin, Civil No. C86-494 and I hereby acknowledge and agree that in the event Rockwood Insurance Company, by and through its insureds, Joe B. Turpin and/or Redwood Industries, elects to seek contribution from the Putter Club or any other joint tortfeasor, I hereby agree that said action can be brought and filed in my name and I further agree to cooperate in making myself available for a deposition and for trial, if necessary, and in the event I fail to so cooperate, then I agree to indemnify Joe B. Turpin and Redwood Industries to the extent of the payment paid by Rockwood Insurance Company on behalf of its insureds, Joe B. Turpin and Redwood Industries, to me.

I hereby declare and represent that in making this Release and agreement, it is understood and agreed that I rely wholly upon my own judgment, belief, and knowledge, and that provided by my father, Jerry Scurlock, the ex-husband of Marilyn Stalboerger, and it is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of Joe B. Turpin and Redwood Industries, by whom liability is expressly denied.

This Release contains the entire agreement between the parties and the terms of this Release are contractual and not mere recital, and the terms of this Release shall be binding upon my heirs, executors, administrators, and assigns forever.

I further state that I have read the foregoing Release and know the contents thereof, and that I signed the same as my own free act.

DATED this 24th day of May, 1988.

WITNESSED BY:

Jerry Scurlock
Jerry Scurlock
Rural Route #1
Mapleton, Iowa 51034
(712) 882-2764
(712) 882-1004

Mark Lee Scurlock
Mark Lee Scurlock
9777 Orangewood Drive
Denver, Colorado 80221
(303) 452-1680

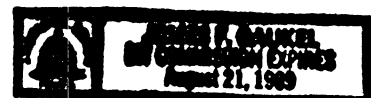
STATE OF Iowa)
) ss.
COUNTY OF Monona)

On the 24th day of May, 1988, before me personally appeared Mark Lee Scurlock to me known to be the person named herein and who executed the foregoing release and stated that he/she had read, understood and voluntarily executed the same.

My Commission Expires:

James F. Hankel
NOTARY PUBLIC

Residing in Mapleton, Iowa



RELEASE OF ALL CLAIMS

For and in consideration of the sum of Twelve Thousand Five Hundred Dollars (\$12,500) receipt of which is hereby acknowledged, I, Mary Louise Burkle, do hereby release and forever discharge,

- (1) Joe B. Turpin, Redwood Industries, its officers, directors, employees, agents, representatives, and insurance carriers, including Rockwood Insurance Company; and
- (2) any and all other joint tortfeasors, including but not limited to, Putter Club, a bar in Salt Lake City, Utah that provided alcoholic beverages to Joe B. Turpin, together with its owners, officers, directors, employees, agents, representatives and insurance carriers.

from any and all rights, claims, demands, and damages of any kind, known or unknown, existing or arising in the future, resulting from or related to an accident which occurred on or about June 20, 1985, in Salt Lake City, Utah.

In further consideration of the amount paid to settle my claims; I hereby agree to make myself available in Salt Lake City, Utah, at a convenient time, for a deposition in the case entitled Andrew John Stalboerger v. Rockwood Insurance Company, Redwood Industries and Joe B. Turpin, Civil No. C86-494 and I hereby acknowledge and agree that in the event Rockwood Insurance Company, by and through its insureds, Joe B. Turpin and/or Redwood Industries, elects to seek contribution from the Putter Club or any other joint tortfeasor, I hereby agree that said action can be brought and filed in my name and I further agree to cooperate in making myself available for a deposition and for trial, if necessary, and in the event I fail to so cooperate, then I agree to indemnify Joe B. Turpin and Redwood Industries to the extent of the payment paid by Rockwood Insurance Company on behalf of its insureds, Joe B. Turpin and Redwood Industries, to me.

I hereby declare and represent that in making this Release and agreement, it is understood and agreed that I rely wholly upon my own judgment, belief, and knowledge, and that provided by my father, Jerry Scurlock, the ex-husband of Marilyn Stalboerger, and it is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of Joe B. Turpin and Redwood Industries, by whom liability is expressly denied.

This Release contains the entire agreement between the parties and the terms of this Release are contractual and not mere recital, and the terms of this Release shall be binding upon my heirs, executors, administrators, and assigns forever.

I further state that I have read the foregoing Release and know the contents thereof, and that I signed the same as my own free act.

DATED this 24th day of May, 1988.

WITNESSED BY:

Jerry Scurlock
Jerry Scurlock
Rural Route #1
Mapleton, Iowa 51034
(712) 882-2764
(712) 882-1004

Mary Louise Burkle
Mary Louise Burkle
Address 823 E. 2700 So.
S.L.C. U# 84106
Telephone(s) 561-457-7345

STATE OF Iowa)
) ss.
COUNTY OF MONONA)

On the 24th day of May, 1988, before me personally appeared Mary Louise Burkle to me known to be the person named herein and who executed the foregoing release and stated that he/she had read, understood and voluntarily executed the same.

My Commission Expires:

James F. Paulkel
NOTARY PUBLIC
Residing in Mapleton, Iowa



ADDENDUM "G"

**Order to Show Cause in C86-985
With Later Clarifying Order**

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

STEPHEN G. MORGAN, No. 2315
MORGAN, SCALLEY & READING
Attorneys for Defendant Rockwood Ins. Co.
261 East 300 South, Second Floor
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

JUL 1 1988
H. DIXON HINDLEY, CLERK, 3rd DIST COURT
BY *Craig* *Burkle*
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY,
STATE OF UTAH

PAUL SCURLOCK,	:	
	:	ORDER TO SHOW CAUSE
Plaintiff,	:	
vs.	:	
JOE B. TURPIN	:	Civil No. C86-985
Defendant.	:	Judge John A. Rokich

Based upon the Court having been advised that the three children of Marilyn Stalboerger, to wit, Paul Scurlock, Mark Lee Scurlock and Mary Louise Burkle have each been paid \$12,500 and signed a release forever discharging Joe B. Turpin, Redwood Industries, its officers, directors, employees, agents, representative and insurance carrier, including Rockwood Insurance Company and any and all other joint tortfeasors, including but not limited to the Putter Club, a bar in Salt Lake City, Utah, that provided alcoholic beverages to Joe B. Turpin together with its owners, officers, directors, employees, agents, representatives and insurance carriers from any and all rights claims, demands and damages of any kind, known or unknown,

existing or arising in the future resulting from or related to an accident which occurred on or about June 20, 1985 in Salt Lake City, Utah, and

The Court having been advised that after Paul Scurlock filed the above entitled action for the wrongful death of his mother, Marilyn Stalboerger, and moved to name Mark Lee Scurlock and Mary Louise Burkle as additional plaintiffs and the Putter Club as an additional defendant, that the only remaining heir of Marilyn Stalboerger, to wit, Andrew Stalboerger, filed a separate action for the wrongful death of his wife against Joe B. Turpin, Redwood Industries and the Putter Club, which was assigned to Judge Richard H. Moffat, Civil No. C-87-2830 and

The Court having been advised that Andrew Stalboerger also filed a fraud action against Rockwood Insurance Company, Redwood Industries, Inc. and Joe B. Turpin, which was assigned to Judge Michael Murphy, Civil No. C86-494, and in which Stalboerger has been given until October 1, 1988 within which to elect whether to pursue his wrongful death action (assigned to Judge Moffat) based on rescission of a release which Stalboerger entered into for the sum of \$48,000 or pursue his claim for fraud (assigned to Judge Murphy) and

Since there now exists in the above entitled court (Judge Rokich) and another Third Judicial District Court (Judge

Moffat) two independent cases asserting claims of wrongful death of the same individual, Marilyn Stalboerger, and filed by different heirs and because wrongful death claims must be pursued by all heirs in a single action, Switzer v. Reynolds, 606 P.2d 344 (Utah 1980),

IT IS HEREBY ORDERED that the above-entitled case, Paul Scurlock v. Joe B. Turpin, will be dismissed with prejudice on July 18, 1988 unless Andrew Stalboerger or any other heir of Marilyn Stalboerger shows cause why the Court should not dismiss the case with prejudice.

DATED this 1 day of ^{July}~~June~~, 1988.

BY THE COURT:

John E. Rokich
John E. Rokich
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be mailed, first class, postage prepaid, on the 16 day of June, 1988, to the following:

Roger P. Christensen
Christensen, Jensen & Powell
Attorneys for Plaintiff Stalboerger
900 Kearns Building
Salt Lake City, Utah 84101

ATTEST
H. DIXON HINDLEY
Clerk
Craig L. Smith
Deputy

Taylor Carr
Attorney for Defendant J. B. Turpin
350 South 400 East, Suite 114
Salt Lake City, Utah 84111

Darwin Hansen
Attorney for Redwood Industries
110 West Center Street
Bountiful, Utah 84010

Warren W. Driggs
Robert DeBry & Associates
Attorney for Paul Scurlock
4001 South 700 East, #501
Salt Lake City, UT 84107

Stephen G Morgan

FILED DISTRICT COURT
Third Judicial District

MAY 10 1990

GREGORY J. SANDERS, ESQ. - NO. A2858
KIPP AND CHRISTIAN, P.C.
Attorneys for Defendant,
The Putter Club
City Centre I, #330
175 East 400 South
Salt Lake City, Utah 84111-2314
Telephone: (801) 521-3773

By Mark Bells
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

PAUL SCURLOCK,	:	ORDER UPON MOTION
	:	TO CLARIFY
Plaintiff,	:	
	:	
vs.	:	Civil No. C86-0985
	:	(Cons. Civil No. C86-494)
JOE B. TURPIN,	:	
	:	Judge Michael R. Murphy
Defendant.	:	

Plaintiff, Andrew J. Stalboerger, in Case No. C86-494 moved in Case No. C86-0985 the court to clarify its Order of July 6, 1988. The Motion to Clarify was opposed by the Putter Club, defendant in Case No. C87-2830. Hearing was held before the Honorable John A. Rokich on December 11, 1989. In hearing on December 5, 1989, this court ordered that Case Nos. C86-494, C86-0985, and C87-2830 be consolidated before this court under C86-494.

The record of C86-0985 reflects that no formal Order has been entered as a result of the December 11, 1989 hearing. In light of the ruling of the Utah Supreme Court entitled Steck v. Aagaire, 130 Utah Adv. Rep. 18 (Utah, March 23, 1990), all cases consolidated must be brought to a final resolution before a right of appeal arises. It is appropriate, therefore, that this court enter an Order reflecting the ruling of the December 11, 1989.

THEREFORE, the court hereby finds that the Honorable Judge John A. Rokich ruled in hearing on December 11, 1989 that its Order of July 6, 1988 was not a final Order of Dismissal and that Case No. C86-0985 remains open and not finally resolved until otherwise so ruled by this court.

DATED this 10th day of May, 1990.

BY THE COURT:


THE HONORABLE MICHAEL R. MURPHY
Third District Court Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25th day of April, 1990, I caused to be mailed, postage prepaid, the foregoing ORDER UPON MOTION TO CLARIFY to the following:

Roger P. Christensen, Esq.
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Plaintiff
510 Clark Leaming Building
175 South West Temple
Salt Lake City, Utah 84101

Stephen G. Morgan, Esq.
Darwin C. Hansen, Esq.
MORGAN & HANSEN
136 South Main Street, Suite 800
Salt Lake City, Utah 84111

Joe B. Turpin
Pro Se
3811 West 3100 South
West Valley City, Utah 84120

Warren Driggs, Esq.
ROBERT DEBRY & ASSOCIATES
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ADDENDUM "H"

Order Regarding Election

FILED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

Roger P. Christensen, #0648
CHRISTENSEN, JENSEN & POWELL, P.C.
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175 South West Temple
Salt Lake City, Utah 84101
Telephone: 355-3431

JUL 6 - 1988

H. District Clerk 3rd Dist. Court
By Martin Bills
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

ANDREW JOHN STALBOERGER,	:	
	:	ORDER
Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. C86-494
ROCKWOOD INSURANCE COMPANY,	:	
REDWOOD INDUSTRIES, INC.,	:	Judge Murphy
and JOE B. TURPIN,	:	
	:	
Defendants.	:	

Pursuant to an order to show cause issued by the Honorable Michael R. Murphy on April 25, 1988, the parties to this action appeared before the Court on May 12, 1988. Also invited to attend were representatives of parties in the related cases of C-87-2830 and C-86-985.

Roger P. Christensen appeared on behalf of the Plaintiff, with Steven G. Morgan appearing on behalf of Defendant, Rockwood; Taylor D. Carr on behalf of Defendant, Turpin; Darwin Hansen on behalf of Defendant, Redwood, and Warren Driggs appeared on behalf of Paul Scurlock, the Plaintiff in C-86-985.

At the hearing, the Court was advised that the claims of Paul Scurlock, the Plaintiff in C-86-985, had been settled. Counsel for Rockwood, Steven G. Morgan, advised the Court that he recently received a settlement demand from the other children of

600754

Marilyn Stalboerger, besides Paul Scurlock. Mr. Morgan also advised that if those claims could not be settled, additional litigation is likely.

Through counsel, Plaintiff, Stalboerger, reiterated his position that he is entitled to plead and attempt to prove the alternative remedies of rescission and damages, with the jury deciding the damage claims, which are legal in nature, and the court deciding the alternative rescission claim, which is equitable in nature. If the trial resulted in a determination that Plaintiff had met its burden on both the rescission claim and one or more of the legal claims, then Plaintiff would be required, at that stage, to make an election between the damages awarded under the legal claims, or pursuing the underlying death and injury claims. In that regard, Plaintiff agreed that in order avoid prejudice to Defendants, the death and injury claims, if they were pursued, would have to be pursued in a separate proceeding, after a decision on the rescission claim had been made.

Plaintiff also agreed that he is not entitled to a double recovery, but contented that, depending on the outcome of the trial, he may be entitled to both rescission and damages based on the claims of bad faith.

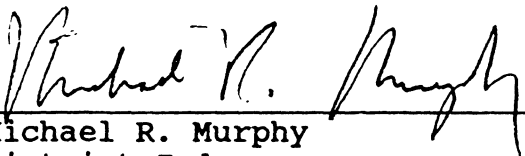
The Court has determined that the position of Plaintiff that he is entitled to make his election after trial is incorrect and hereby rules that Plaintiff must elect between the legal damage claims or the equitable rescission claim at an earlier

stage. Accordingly, it is hereby ordered that Plaintiff shall make such election on or before October 1, 1988, which election shall be made by a written document filed with the Court and served on counsel of record herein.

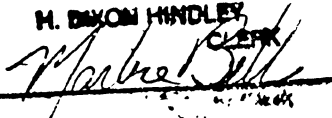
It is anticipated that discovery will not be limited in any of the above-mentioned related cases prior to such election, and that an additional reasonable period will be allowed in said cases after such election is made for discovery to be completed.

DATED this 6th day of July, 1988.

BY THE COURT:



Michael R. Murphy
District Judge

ATTEST
H. DIXON HINDLEY
CLERK
BY 

H. Dixon Hindley

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Order was mailed, postage prepaid, addressed to the following

Stephen G. Morgan
Morgan, Scalley & Reading
261 East 300 South, Suite 200
Salt Lake City, Utah 84111

Taylor D. Carr
350 South 400 East, Suite 144
Salt Lake City, Utah 84111

David Epperson
Hanson, Epperson & Smith
175 South West Temple, Suite 650
Salt Lake City, Utah 84101

Darwin C. Hansen
110 West Center
Bountiful, Utah 84010

Warren W. Driggs
Robert DeBry & Associates
4001 South 700 East, #501
Salt Lake City, Utah 84107

DATED this 20th day of May, 1988.

Susan Perry

ADDENDUM "I"

Notice of Election

Roger P. Christensen, #0648
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Plaintiff
510 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
Telephone: 355-3431

FILED IN CLERKS OFFICE
SALT LAKE COUNTY, UTAH

SEP 30 4 55 PM '88

H. L. L. CLERK
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

ANDREW JOHN STALBOERGER,	:	
	:	NOTICE OF ELECTION AS
Plaintiff,	:	REQUIRED BY COURT ORDER
	:	
vs.	:	
	:	Civil No. C86-494
ROCKWOOD INSURANCE COMPANY,	:	
REDWOOD INDUSTRIES, INC.,	:	Judge Murphy
and JOE B. TURPIN,	:	
	:	
Defendants.	:	

On July 6, 1988, the Court signed an order requiring plaintiff to make an election between his claims for damages and his claims for rescission of the purported release.

To fulfill his duty to comply with the order of the court, plaintiff hereby gives notice of his election of the damage claims. These which claims include the claims for misrepresentation, fraud, bad faith, conflict of interest and other damage claims arising from misconduct on the part of defendant, Rockwood, and its agents and/or the misconduct of third parties, which conduct Rockwood has ratified, benefited from or sought to benefit from. Such claims are for punitive

damages as well as compensatory damages.

This election is not made voluntarily, but by court order. By complying with such order, plaintiff is not voluntarily waiving his claims for rescission and such further claims and rights as he may have relating thereto, but expressly preserves such claims and his right to appeal from the decision of the court requiring this election to be made at this stage in the proceedings.

DATED this 30th day of September, 1988.

CHRISTENSEN, JENSEN & POWELL, P.C.

By 

Roger P. Christensen
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Notice of Election as Required by Court Order was mailed, postage prepaid to the following this 30th day of September, 1988.

Stephen G. Morgan
Morgan, Scalley & Reading
261 East 300 South, Suite 200
Salt Lake City, Utah 84111

Taylor D. Carr
350 South 400 East, Suite 144
Salt Lake City, Utah 84111

Dan McConkie
Hanson, Epperson & Smith
175 South West Temple, Suite 650
Salt Lake City, Utah 84101

Darwin C. Hansen
110 West Center
Bountiful, Utah 84010

Gregory J. Sanders
Kipp & Christian
175 East 400 South, Suite 300
Salt Lake City, Utah 84111

Susan Perry

ADDENDUM "J"

Amended Complaint in Fraud Case

FILED
DISTRICT COURT

JAN 9 4 19 PM '90

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY Amulena
DEPUTY CLERK

Roger P. Christensen, #0648
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Plaintiff
510 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
Telephone: 355-3431

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

ANDREW JOHN STALBOERGER,

Plaintiff,

vs.

ROCKWOOD INSURANCE COMPANY,
REDWOOD INDUSTRIES, INC.,
and JOE B. TURPIN, and ARIZONA
ALL-CLAIMS, INC., dba, aka
and/or successor in interest
of UTAH ALL-CLAIMS, INC.,

Defendants.

ROCKWOOD INSURANCE COMPANY,

Third Party Plaintiff,

vs.

ARIZONA ALL-CLAIMS, INC., dba,
aka and/or successor-in-interest
of UTAH ALL-CLAIMS, INC., and
RAY SUMMERS,

Third Party Defendants.

AMENDED COMPLAINT
(Revised)

Civil No. C86-494

Judge Murphy

As claims against defendants, plaintiff alleges as
follows:

GENERAL ALLEGATIONS

1. Andrew John Stalboerger is a resident of Salt Lake County, State of Utah, and is the surviving spouse of Marilyn S. Stalboerger.

2. Rockwood Insurance Company ("Rockwood"), is a corporation incorporated in a State other than the State of Utah, and is doing business within the State of Utah. Redwood Industries, Inc. ("Redwood"), is a Utah corporation doing business in Salt Lake County, Joe B. Turpin ("Turpin") is an individual resident of Salt Lake County, Utah. Arizona All-Claims, Inc. ("Arizona All-Claims") dba, aka, and/or successor-in-interest of Utah All-Claims, Inc. ("Utah All-Claims"), was at all times relevant herein doing business in the State of Utah.

3. On or about June 20, 1985, at approximately 350 South on Redwood Road, in Salt Lake City, Utah, at approximately 7:15 p.m., an automobile accident occurred, involving plaintiff and his wife, Marilyn S. Stalboerger, among others. At the time of said accident, plaintiff and his wife were traveling northbound along Redwood Road. While they were so traveling, an automobile operated by Turpin, which was traveling in a southerly direction, crossed over the raised median dividing the roadway and collided with the automobile occupied by plaintiff and his wife. As a result, plaintiff's wife was fatally injured and plaintiff, himself, sustained serious personal injuries.

4. The driver of the other automobile, Turpin, was intoxicated at the time of the accident and the accident resulted from his negligence and other misconduct.

5. At the time of the accident, plaintiff and his wife had an automobile insurance policy with defendant, Rockwood. Said policy provided personal injury protection under the Utah No-Fault Statute, as well as liability coverage. The other automobile, driven by Turpin, was covered under a policy of insurance listing his employer, Redwood, as the named insured, with said policy also being written by Rockwood.

6. A few days after the accident, while plaintiff was still suffering the effects of his injuries and the emotional trauma of his wife's death, plaintiff was contacted by Ray Summers, an insurance adjuster representing defendants.

7. At all times referred to herein Summers was acting as the agent of Rockwood, and/or Utah All Claims and/or Arizona All-Claims, and his actions were ratified by and done with the knowledge, and/or approval and/or consent of Rockwood, and/or Utah All-Claims and/or Arizona All-Claims, so that his actions are imputed to said defendants.

8. During the period from the date of the accident, until July 12, 1985, Summers came to plaintiff's home on several occasions and also communicated with him by telephone. Summers' dealings with plaintiff and the statements which he made to

plaintiff, were calculated to gain plaintiff's trust and confidence so that plaintiff would rely on said statements in dealing with him. Said statements were also calculated to cause plaintiff to believe that Summers was acting in plaintiff's best interests and that he would be dealt with fairly.

9. After Summers had gained plaintiff's confidence and trust, on or about July 12, 1985, he induced plaintiff, through both express and implied misrepresentations, to sign several documents. Included in said documents, were documents purporting to settle and release plaintiff's claims arising from the accident, including his claims against Redwood and Turpin, as well as his rights to payment from Rockwood under his own policy of insurance. (The aforesaid documents signed by plaintiff will at times, be collectively referred to herein as the "purported release"). Although plaintiff was tendered some payment by Rockwood, the amount of the payment was wholly inadequate and grossly unfair.

10. As a result of the misrepresentations and other inequitable misconduct on the part of defendants, (acting through Summers), plaintiff did not understand the significance that the documents he was signing purported to have and did not understand that the language of said documents purported to waive his rights to receive additional payments.

11. Shortly after signing said documents, he requested payment of medical and other expenses incurred as a result of the

accident. He also requested payment of benefits under his own insurance policy. Rockwood refused to make any such payment, contending that he had waived such rights.

12. Because Rockwood's refusal was inconsistent with the representations made to him by Summers, plaintiff's suspicions were aroused and he sought legal counsel. Upon investigating the matter, it became apparent to counsel that the purported release had been wrongfully obtained. By a letter dated July 25, 1985, counsel so advised defendants, tendering back the amount of the purported settlement. At such time counsel demanded that Rockwood engage in negotiations to settle plaintiff's claims on a fair and equitable basis.

13. On July 30, 1985, counsel again wrote to Rockwood, sending a cashier's check in the amount of all amounts given to plaintiff in purported settlement of his claims. Counsel again demanded that Rockwood engage in good faith negotiations to settle plaintiff's claims.

14. Plaintiff has since the filing of this action, tendered and delivered said check to the court and pursuant to stipulation, the court has ordered that it be endorsed, cashed and that proceeds be held by clerk of the court in an interest bearing account pending the outcome of this action.

15. Rockwood has refused both to accept plaintiff's tender or to engage in good faith settlement negotiations. Since

that time Rockwood has continually refused to negotiate with plaintiff in good faith or even to recognize the validity of his claims. Rockwood has maintained this posture, even after having been advised of the facts by plaintiff's counsel and after having been afforded a full opportunity to do its own investigation. The remaining defendants have supported and/or acquiesced in such wrongful conduct by Rockwood and have made no attempt to remedy it.

16. As a result of Rockwood's refusal, plaintiff has been required to bring this legal action and has incurred, and is incurring, attorney's fees and other litigation costs and expenses.

CLAIM I

17. The allegations of paragraphs 1 through 16 are realleged and incorporated by reference herein.

18. Defendants had, and have, duties of good faith and fair dealing in their dealings with plaintiff. By their actions, defendants have breached, and are continuing to breach, their duties. As a result of such breach, plaintiff has been deprived of a fair resolution and settlement of his claims. Defendants have also acted willfully and maliciously and/or in reckless disregard for plaintiff's rights.

19. Plaintiff is entitled to recover from Rockwood an amount equaling the full value of his claims arising from the aforesaid automobile accident based on the facts known at the time of the purported settlement. Plaintiff is also entitled to recover

interest thereon, together with an amount fairly and adequately compensating him for his emotional distress, his attorney's fees and litigation costs and all other general and consequential damages flowing from such breach. In addition, plaintiff is also entitled to recover from defendants punitive damages in an amount to be determined by the court.

CLAIM II

20. The allegations of paragraphs 1 through 19 are realleged and incorporated by reference herein.

21. Prior to plaintiff's signing of the purported release, defendants acting through their agent, Summers, represented to plaintiff that the amount of the purported settlement represented the fair value of plaintiff's claims, was the most Rockwood would pay for them and was the maximum amount plaintiff could realize on them. When defendants made such representations, they knew and intended that plaintiff would act in reliance thereon in executing the purported release.

22. Plaintiff did act in reliance on said representations, in signing the purported release.

23. At the time said representations were made, they were not true and defendants knew, or should have known, that they were not true.

24. Plaintiff actually and reasonably relied on said intentional, fraudulent and/or negligent misrepresentations, to his

detriment, and as a consequence has been unable to realize the fair value of his claims and/or the amounts Rockwood was prepared to pay.

25. Plaintiff's claims, in reality, were not worth the \$48,000 tendered to him, but instead were worth much more and Rockwood was prepared to and was obligated to pay much more for them.

26. Plaintiff is entitled to recover the amount he would have received had defendants' made truthful representations to him.

27. If it is determined by the court that said misrepresentations were made fraudulently, willfully and maliciously, or in reckless disregard for the rights of plaintiff, then plaintiff is also entitled to recover punitive damages from defendants in an amount deemed sufficient by the court to deter defendants from engaging in such misconduct in the future.

CLAIM III

28. The allegations of paragraphs 1 through 27 are realleged and incorporated by reference herein.

29. Defendant, Rockwood, acting through its officers, directors, employees and agents was negligent in its hiring, retention and supervision of Ronald Walker, Deborah Friedrichson, Norman Meyer, Utah All-Claims and/or Ray Summers.

30. In addition, Rockwood was and continues to be negligent in its failure to take the steps necessary to remedy the

misconduct of its employees and agents.

31. As a result of the negligence of Rockwood, plaintiff has been damaged as set forth herein.

CLAIM IV

32. The allegations of paragraphs 1 through 31 are realleged and incorporated by reference herein.

33. Defendant, Arizona All-Claims, Inc. dba, aka and/or successor in interest of Utah All-Claims and/or Utah All-Claims, were negligent in their hiring, retention and supervision of Ray Summers, and Summers was negligent in his handling of plaintiff's claims.

34. Said defendants were also negligent in failing to take the necessary steps to remedy the misconduct of Ray Summers.

35. As a proximate result of such negligence plaintiff has been damaged as set forth herein.

CLAIM V

36. The allegations of paragraphs 1 through 35 are realleged and incorporated by reference herein.

37. To induce plaintiff to enter into the purported release contract, defendants made direct and positive factual affirmations and assurances to plaintiff that \$48,000 represented the full and fair value of his claims, that such amount was the most Rockwood would pay on such claims and the most plaintiff would realize from them. Defendants also made other related direct and

positive affirmations of fact as inducement to plaintiff.

38. Plaintiff acted in reliance on such factual affirmations and assurances and signed the purported release contract.

39. Such factual assurances and affirmations by defendants constituted express warranties.

40. Such factual assurances and affirmations were untrue and plaintiff has been damaged as a result, as set forth herein.

41. By reason of such express warranties, defendants are liable to plaintiff for such damages.

If it is determined by the court that plaintiff is not entitled to the relief sought under Claims I, II, III, IV and V then, in the alternative, plaintiff alleges and prays as follows:

CLAIM VI

42. The allegations of paragraphs 1 through 41 are realleged and incorporated by reference herein.

43. As a result of the aforesaid misrepresentations, whether made innocently, negligently or intentionally, plaintiff is entitled to rescission of the purported release to allow him to pursue a fair and equitable resolution of his claims.

44. In addition, if it is determined by the court that such misrepresentations were made willfully and maliciously, or in reckless disregard of plaintiff's rights, plaintiff is entitled to recover punitive damages from defendant in an amount to be

determined by the court.

CLAIM VII

45. The allegations of paragraphs 1 through 44 are realleged and incorporated by reference herein.

46. Rockwood breached the terms of the purported release by its failure and refusal to pay the plaintiff's medical expenses, among other things.

47. As a result of said breach, plaintiff is entitled to rescind the purported release.

CLAIM VIII

48. The allegations of paragraphs 1 through 47 are realleged and incorporated by reference herein.

49. The purported release resulted from a mutual mistake of material fact, or a unilateral mistake of material fact on the part of plaintiff, which mistake was known to Rockwood and/or induced by the misrepresentations or other inequitable conduct of Rockwood.

50. As a result of said mistake or mistakes, plaintiff is entitled to rescind said purported release.

CLAIM VIX

51. The allegations of paragraphs 1 through 50 are realleged and incorporated by reference herein.

52. As a result of the misconduct of defendants as alleged herein, which misconduct has worked to plaintiff's

detriment, it would be unjust and inequitable to allow defendants to enforce the purported release, so as to deprive plaintiff of his lawful rights and claims.

53. Defendants should be estopped from asserting or enforcing the purported release.

WHEREFORE, plaintiff prays for judgment as follows:

A. For joint and several judgment against defendants:

1. In an amount representing the full value of his claims for the death of his wife and his own personal injuries, and/or the amount plaintiff could have realized from such claims.

2. Punitive damages in an amount to be determined by the court; and

3. Plaintiff's attorney's fees and litigation expenses; and

4. Interest, costs and such other relief as may be just and equitable.

B. If it is determined by the court that plaintiff is not entitled to the relief prayed for under paragraph A above, then, in the alternative, plaintiff prays as follows:

1. The court's judgment, entered in favor of plaintiff and against all of the defendants, rescinding and setting aside the purported release, together with the costs of this action and such other relief as may be just and equitable; and

2. In addition, joint and several judgment against

defendants:

i. For plaintiff's attorney's fees and other litigation expenses, together with interest; and

ii. Punitive damages in an amount to be determined by the court.

DATED this 4th day of January, 1990.

CHRISTENSEN, JENSEN & POWELL, P.C.

By 

Roger P. Christensen
Attorneys for Plaintiff

ADDENDUM "K"

Particularized Statement of Fraud Allegations

FILED
DISTRICT COURT

JAN 9 4 19 PM '90

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

BY John Wong
DEPUTY CLERK

Roger P. Christensen, #0648
Karra J. Porter, 5223
CHRISTENSEN, JENSEN & POWELL, P.C.
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IN THE THIRD JUDICIAL DISTRICT OF SALT LAKE COUNTY

STATE OF UTAH

ANDREW JOHN STALBOERGER,

Plaintiff,

vs.

ROCKWOOD INSURANCE COMPANY,
REDWOOD INDUSTRIES, INC.,
and JOE B. TURPIN,

Defendants.

PARTICULARIZED STATEMENT
OF FRAUD ALLEGATIONS

ROCKWOOD INSURANCE COMPANY,

Third Party Plaintiff,

vs.

ARIZONA ALL-CLAIMS, INC., dba,
aka and/or successor-in-interest
of UTAH ALL-CLAIMS, INC., and
RAY SUMMERS,

Third Party Defendants.

Civil No. C86-494

Judge Murphy

INTRODUCTION

At the recent hearing conducted in this matter, the Court
indicated that while the new defendants were not entitled to a

highly detailed and comprehensive factual statement, they were entitled to a statement giving more particularity with respect to plaintiff's claims of fraud. Consistent with such direction from the Court, the following statement is provided:

PARTICULARIZED STATEMENT OF FRAUD ALLEGATIONS

Plaintiff alleges that the following actions and/or conduct are supportive of the allegations of fraud on the part of Ray Summers, acting in the course and scope of his employment and/or agency with the remaining defendants as well as other actions by the other defendants supporting and advancing the fraud on Stalboerger and seeking to benefit from it:

1. Within one week of the death of Mrs. Stalboerger, and only a few days after Mr. Stalboerger was released from the hospital, and while Stalboerger was still in a depressed emotional state, Summers contacted Stalboerger. A few days later, on approximately July 1, 1985, Summers met with Stalboerger at his home and stayed for approximately two hours. Summers, realized Stalboerger's depressed emotional state and his lack of experience and understanding concerning personal injury and death claims.

Summers intentionally made numerous statements to manipulate Stalboerger's emotions, impressions and judgments. He also made numerous statements and took various actions to inspire and cause Stalboerger to trust and rely on him and to look to

Summers for guidance in settling his claims. Although it would be impractical to list all of such statements and actions, examples of them are as follows:

a) Summers was working on Stalboerger's behalf to get him as good of a deal as possible and would see to it that he was treated fairly. He would go to bat for Stalboerger and act in his best interests.

b) He understood that Stalboerger was mourning the death of his wife and he would take care of things so that Stalboerger would not have to worry.

c) Summers told Stalboerger that he, (Summers), was very conscientious and very helpful to people and would do everything he could for him.

d) Summers encouraged Stalboerger to reminisce concerning his wife and expressed sympathy and empathy for Stalboerger and took similar actions to cause him to believe he was sincerely concerned for his welfare.

2. In the July 1 meeting and/or in subsequent communications up through and including July 12, 1985, (when the purported release was signed), Summers continued his manipulation of Stalboerger's emotions, trust and confidence and manipulated his thinking with respect to his claims; this was done to cause Stalboerger to believe that his claims were worth far less than

they actually were, to cause Stalboerger to rely on Summers and to cause him to accept an unconscionable settlement. Examples of such statements and actions are as follows:

a) Summers told Stalboerger not to retain legal counsel and represented that Stalboerger would receive less compensation if he did. He also told him that he, (Summers), would protect his interests and he did not need an attorney to assist him and he would be better off without one. Summers, through making unjustified inquiries into plaintiff's financial condition discovered that he was in need of immediate funds to pay funeral expenses, medical bills, other expenses relating to the accident and an outstanding judgment. Summers knowingly failed to disclose to plaintiff that ample funds were available under plaintiff's own no-fault insurance coverage to take care of such expenses and that it was not necessary to release claims against the tort feasons to obtain those funds. Summers intentionally failed to disclose such facts to plaintiff to unnecessarily enhance the financial pressures on him in order to coerce him into accepting a premature and unconscionable settlement.

b) Summers falsely represented that the maximum benefits available to Stalboerger under his own no-fault coverage totalled \$2,000, when in reality, Stalboerger was entitled to several times that amount.

c) As a calculated effort to foster plaintiff's trust and confidence and to cause him to believe and rely on Summers' statements and advice, Summers caused plaintiff to believe that he was receiving payment for his automobile in excess of the car's value and that Summers was obtaining very generous and favorable treatment for him from Rockwood. For example, Summers caused plaintiff to believe that his car was worth only \$600 to \$700 and then obtained \$800 for Stalboerger for it.

d) Summers represented that if plaintiff settled, the amount would not be subject to income tax, but that if he recovered through litigation, the recovery would be taxable income.

e) Summers knowingly represented to Stalboerger that he could not recover general damages under the law, such as loss of society, companionship, etc., but was only entitled to recover part of the monetary losses resulting from his wife's death.

f) Summers, as either complete misrepresentation or misleading half truth, told Stalboerger that, in his more than 20 years of experience, the most he had ever paid, or had seen paid, for a wrongful death claim was \$23,000 and that that amount was paid to the widow and surviving children of a young Congressional Medal of Honor winner who had been killed by a drunk driver. Summers knowingly failed to disclose that the amount paid

represented the entire amount of available insurance coverage and consciously caused Stalboerger to believe that the amount paid represented the full value of the claim.

g) Later Summers, feigning enthusiasm, represented to Stalboerger that he had been able to obtain for him \$30,000 for the death of his wife, which was more than he had ever seen paid for a death claim in all of his years of experience. Such statements were calculated to cause Stalboerger to believe that he was receiving a full and generous settlement for such claim.

h) While Rockwood was prepared to pay at least \$250,000 in settlement of plaintiff's claims, and knowing and intending that Stalboerger would believe and rely on him, Summers misrepresented to Stalboerger that \$48,000 was the most Rockwood would pay.

3. Directly relating to the release document itself and the related circumstances, Summers made numerous misrepresentations and engaged in other fraudulent conduct. Examples of such are as follows:

a) Knowing that the plaintiff was unable to read the release documents due to Stalboerger's glasses having been destroyed in the accident, and knowing that Stalboerger lacked the ability and background to comprehend the documents even if he could read them, Summers caused plaintiff to sign documents which

contained statements that Summers knew were untrue. For example, a statement that Stalboerger had solicited the settlement when, in reality, Summers had; a statement that Stalboerger was acting on behalf of Marilyn Stalboerger's other heirs when Summers knew that plaintiff had no authority to do so; and a statement that Stalboerger was only entitled to \$2,000 from his own no-fault coverage.

b) Summers represented to Stalboerger that the settlement at that point would not constitute final resolution of claims for his own injuries, but because the extent of those injuries was not yet known, that the claim would be left open for at least a year.

c) Summers represented that in order for Rockwood to be able to pay the existing medical bills and other expenses, it was necessary for him to sign the release document.

d) Summers represented that in spite of signing the release document, Rockwood, through Summers, would still take care of any subsequent bills and expenses related to the accident.

e) Summers stated that Stalboerger would receive \$48,000 on July 12, but indicated that this was not a final settlement of all the claims and that Stalboerger would be entitled to receive additional amounts from Rockwood later.

4. The foregoing statements and misrepresentations set

forth in paragraphs 1 through 3 above, were made as part of a scheme to gain Stalboerger's trust and confidence, to manipulate and mislead him to his detriment and to the benefit of the defendants. At the time that the above statements and representations were made, Summers and the remaining defendants knew they were false. Summers and they knew that Stalboerger's claims were worth between \$250,000 and \$500,000; that Rockwood was willing to pay Stalboerger an amount in that range; that if Stalboerger obtained legal counsel he would receive such an amount; that Stalboerger was entitled to receive funds from Rockwood, under his own no-fault insurance coverage, in an amount in excess of \$10,000 without releasing his personal injury and death claims, and that such amount would relieve the immediate financial pressures on Stalboerger; that the purported release documents which Stalboerger was required to sign purported to release all of his claims; that Rockwood, and any other potentially responsible party, would refuse to make any additional payments to Stalboerger after the release documents were signed; and that Stalboerger was trusting and relying on Summers and the representations which had been made to him and that he was being misled, unconscionably treated and defrauded as a result.

5. Subsequent to the signing of the purported release documents on July 12, 1985, defendants have engaged in further

fraudulent activity. Examples of this, are as follows:

a) In spite of the statements and assurances made to Stalboerger earlier, they refused to make any further payment to him either pursuant to his tort claims or pursuant to his own insurance coverage.

b) Even after repeated contacts from Stalboerger's counsel and after a full opportunity for investigation and discovery was afforded to them, and the foregoing fraudulent conduct was disclosed and discovered by them, they have done nothing to remedy the situation, but have continued in the perpetuation of the fraud on Stalboerger.

c) Knowing that the purported release document was not binding on Marilyn Stalboerger's other heirs, defendants, nevertheless, asserted that it was and used such assertion to their advantage and to the disadvantage of Stalboerger and Marilyn Stalboerger's other heirs.

d) As further perpetuation of the fraud in question, defendants made payments to the other heirs and related persons on the condition that such persons would testify against Stalboerger and assist defendants in perpetuating the fraud already committed.

e) While it was clearly defendants' understanding and intent that the purported release would release all of

Stalboerger's claims against all persons and entities, in an effort to justify and perpetuate the fraud committed, defendants are now falsely contending that only a partial release was intended.

f) While defendants believed at the time in question that Stalboerger's claims were worth at least \$250,000, in order to justify and perpetuate the fraud on Stalboerger, defendants now falsely claim that the \$250,000 value set on said claims at the time in question does not reflect their belief at the time.

g) While defendants clearly understood and intended that the purported settlement with Stalboerger would not extinguish the claims of other heirs, or that the settlement with the other heirs would not extinguish Stalboerger's claims, defendants have, nevertheless, in order to perpetuate the fraud on Stalboerger, claimed the Stalboerger settlement to bar the claims of the other heirs and have claimed that the settlement of the claims of the other heirs bars Stalboerger's claims.

h) While the other defendants fully supported, encouraged and acquiesced in Summers' actions, and have subsequently done everything within their power to benefit from his misconduct, they now falsely claim that Summers was acting entirely on his own, without their knowledge, consent or approval and completely independently of them.

i) Rather than taking steps to remedy the wrongs done to Stalboerger, defendants have actively sought to perpetuate and enhance them.

6. It is not feasible or practical to list all facts tending to support plaintiff's claims of fraud. However, plaintiff believes, in good faith, that the foregoing meets the direction recently given by the Court for a statement of more particularity.

DATED this 4th day of January, 1990.

CHRISTENSEN, JENSEN & POWELL, P.C.

By 

Roger P. Christensen
Attorney for Plaintiff

CERTIFICATE OF SERVICE

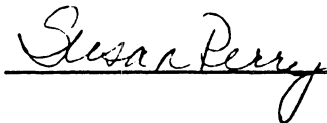
This is to certify that on the 4th day of January, 1990,
a true and correct copy of the foregoing **PARTICULARIZED STATEMENT**
OF FRAUD ALLEGATIONS was hand-delivered, addressed to:

Stephen G. Morgan
Morgan & Hansen
800 Kearns Building
136 South Main Street
Salt Lake City, Utah 84111

Taylor D. Carr
350 South 400 East, Suite 144
Salt Lake City, Utah 84111

Dan McConkie
Hanson, Epperson & Smith
4 Triad Center, Suite 500
Salt Lake City, Utah 84110

Darwin C. Hansen
Morgan & Hansen
800 Kearns Building
136 South Main Street
Salt Lake City, Utah 84111



ADDENDUM "L"

Fraud Case Settlement Agreement

SETTLEMENT AGREEMENT

This settlement agreement is entered into this 26th day of April, 1990, by and among John Stalboerger ("Stalboerger"), Rockwood Insurance Company ("Rockwood"), Arizona All-Claims, and Utah All-Claims, Inc. (collectively referred to as "Arizona"), and Ray Summers.

WHEREAS, Stalboerger has filed suit against Rockwood and Arizona alleging numerous causes of action, entitled Stalboerger v. Rockwood, et al., Civil No. C86-494 in the Third Judicial District Court for the State of Utah;

WHEREAS, the parties desire to settle and compromise their differences, on the terms and conditions set forth herein to avoid the necessity of incurring additional litigation costs and expenses.

NOW THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. The parties stipulate that the amount of \$48,000 (together with any interest accrued thereon) which was deposited with the court shall be disbursed to Stalboerger. The parties acknowledge that the \$48,000 was paid toward claims as follows: \$32,100 for Stalboerger's wrongful death claim of Marilyn Stalboerger; \$15,000 for Stalboerger's personal injury claims and \$900 for Stalboerger's property damage claim.

2. The parties expressly acknowledge that at the time said \$48,000 was given to Stalboerger and the Release was executed by Stalboerger, (a copy of which is attached hereto and marked as Exhibit A), it was the intent and understanding of the parties that Stalboerger was not releasing any person or entity not expressly named therein, including The Putter Club and that Stalboerger's claims against such other persons or entities would not be precluded by the Release, despite its general language. Stalboerger will make a motion to the Court consistent with this Agreement. The other parties to this agreement will not oppose said motion.

3. In settlement of Stalboerger's claims for emotional distress, punitive damages, attorney's fees and court costs arising only from the manner in which his claims were handled by Summers, Arizona and Rockwood, (and not arising from the accident itself and the emotional distress, personal injuries and death resulting therefrom), Arizona shall pay Stalboerger \$81,600, Rockwood will pay Stalboerger \$35,400 and Stalboerger shall execute a Covenant Not to Pursue Claims a copy of which is marked as Exhibit B. Rockwood will also pay Stalboerger \$3,000 in full settlement of all claims for no-fault benefits under his policy with Rockwood which

Stalboerger acknowledges constitutes full and complete settlement of all no-fault claims arising in the accident at issue.

4. It is expressly acknowledged by the parties that said payments of \$81,600 and \$35,400 are not in payment of the damages sustained by Stalboerger for his personal injuries, his property damage, his emotional distress or his claims for the wrongful death of Marilyn Stalboerger and related claims, arising from the accident in question. It is the awareness of the parties that Stalboerger may pursue recovery from The Putter Club (and its insurer) of additional amounts for such claims.

5. It is acknowledged and agreed that Rockwood does not release, but reserves its contribution claims and rights against The Putter Club. Stalboerger acknowledges that as a result of Rockwood's payments to Mary Louise Burkle, Paul Scurlock and Mark Scurlock, totaling \$37,500, Rockwood has contribution claims against The Putter Club which Rockwood may pursue in the pending action against The Putter Club.

6. The settlement of the Stalboerger claims as described above and the Covenant Not to Pursue Claims marked as Exhibit B, shall be subject to and conditioned upon a final ruling by the court, (and appellate courts if necessary), that Stalboerger's claims against The Putter Club have not been released and that The Putter Club, (except for the \$3,000 of no-fault benefits) is not entitled to an offset for amounts paid hereunder.

7. It is expressly agreed that neither Stalboerger nor Rockwood will attempt, at any time, to rescind or modify the Release attached hereto as Exhibit A. Stalboerger further agrees that he will not rescind the election of remedies made earlier in this case.

8. The parties shall execute the necessary documents to effect the terms of this agreement.

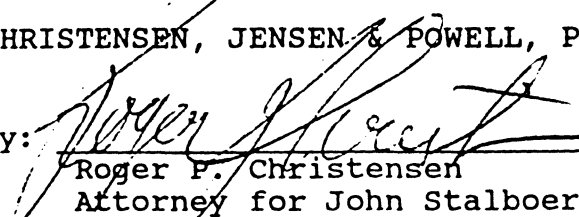
9. It is acknowledged and agreed that this agreement represents a compromise of disputed claims and is not to be construed as an admission of liability of any party hereto.

10. Rockwood shall take the steps necessary to have cashier's checks of \$3,000 and \$35,400 payable to Andrew John Stalboerger and his attorney, Roger P. Christensen, in the physical possession of its counsel, Michael J. Cooper, no later than 5:00 p.m. Salt Lake City time, on April 27, 1990. It is agreed that said counsel will not deliver said checks, until the conditions of the settlement have been met.

DATED this 26th day of April, 1990

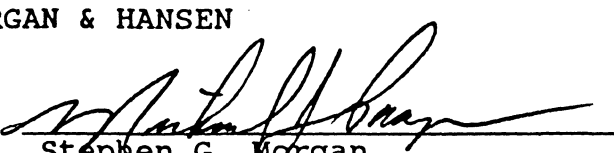
CHRISTENSEN, JENSEN & POWELL, P.C.

By:


Roger P. Christensen
Attorney for John Stalboerger

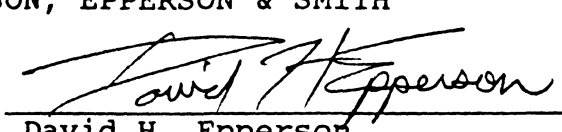
MORGAN & HANSEN

By:


Stephen G. Morgan
Attorney for Rockwood

HANSON, EPPERSON & SMITH

By:


David H. Epperson
Attorney for Arizona and
Ray Summers

ADDENDUM "M"

Order Approving Settlement

FILED DISTRICT COURT
Third Judicial District

SEP 13 1990

Roger P. Christensen, #0648
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Plaintiff
510 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
Telephone: 355-3431

By *Walter D. Balle*
SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

ANDREW JOHN STALBOERGER,	:	
	:	
Plaintiff,	:	ORDER APPROVING
	:	SETTLEMENT, ORDER OF
vs.	:	PARTIAL DISMISSAL AND
	:	PARTIAL SUMMARY JUDGMENT
ROCKWOOD INSURANCE COMPANY,	:	
REDWOOD INDUSTRIES, INC.,	:	
and JOE B. TURPIN,	:	
	:	
Defendants.	:	
<hr/>		
ROCKWOOD INSURANCE COMPANY,	:	
	:	
Third Party Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. C86-494
ARIZONA ALL-CLAIMS, INC., dba,	:	
aka and/or successor-in-interest:	:	Judge Murphy
of UTAH ALL-CLAIMS, INC., and	:	
RAY SUMMERS,	:	
	:	
Third Party Defendants.	:	

On or about May 17, 1990, plaintiff filed a Motion for Approval of Settlement Agreement, For Order of Partial Dismissal and For Partial Summary Judgment. Various memoranda of points and authorities and affidavits were filed in connection with such

motions, in support and opposition. On or about June 25, 1990, said motions came on for hearing before the Honorable Michael Murphy of the above entitled court. Roger P. Christensen appeared on behalf of the plaintiff, Daniel S. McConkie appeared on behalf of the Arizona All-Claims, Utah All-Claims and Ray Summers, and Gregory J. Sanders appeared on behalf of The Putter Club.

The Court having fully considered the affidavits, memoranda, oral arguments and record in this case in connection with the aforesaid motions, and being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The settlement agreement reflected in the document attached as Exhibit 1 to plaintiff's Motion for Approval of Settlement Agreement is hereby approved.

2. Plaintiff's claims against defendants Rockwood and Arizona and Utah All-Claims are hereby dismissed without prejudice.

3. It is hereby determined and declared that the plaintiff has not released his claims in whole or in part against The Putter Club.

4. The Third Affirmative Defense set forth in The Putter Club's Answer to Plaintiff's Amended Complaint is stricken. (Said affirmative defense reads as follows: A. "Any liability which may exist in this defendant toward the plaintiff was released by the release entered by the plaintiff on or about July 12, 1985.")

5. It is hereby determined and declared that, with the possible exception of the \$3,000 paid as no-fault benefits, none of the amounts paid under the settlement agreement attached as Exhibit 1 to plaintiff's Motion for Approval of Settlement Agreement are to be considered as compensation for plaintiff's personal injuries, property damage, wrongful death claims or other claims relating to the June 20, 1985, accident and Stalboerger's receipt of funds pursuant to said settlement agreement shall not result in any credit against any judgment rendered hereafter.

6. It is hereby determined and declared that the \$48,000 payment by Rockwood to the plaintiff, (currently held by the Court Clerk), is apportioned against plaintiff's claims as follows: \$15,000 against plaintiff's claims for his own personal injuries; \$32,100 against plaintiff's claims relating to the death of his wife; and \$900 against plaintiff's claims for damage to his automobile.

7. The Clerk of the Court is hereby ordered to issue a check made payable jointly to the plaintiff, Andrew John Stalboerger, and his attorney, Roger P. Christensen, in an amount representing the \$48,000 previously tendered to the Court by Stalboerger, together with all accrued interest thereon.

DATED this 13th day of September, 1990.

BY THE COURT:

Michael R. Murphy
Michael Murphy
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Order Approving Settlement, Order of Partial Dismissal and Partial Summary Judgment was hand delivered to the following this 28th day of ~~March~~ August, 1990:

Stephen G. Morgan
Michael J. Cooper
Morgan & Hansen
800 Kearns Building
136 South Main Street
Salt Lake City, Utah

David H. Epperson
Daniel S. McConkie
Hanson, Epperson & Smith
4 Triad Center, Suite 500
Salt Lake City, Utah 84110

Gregory J. Sanders
Kipp & Christian
175 East 400 South, Suite 330
Salt Lake City, Utah 84111

Joe B. Turpin, pro se
3811 West 3100 South
West Valley City, Utah 84120

Taylor D. Carr
350 South 400 East, #114
Salt Lake City, Utah 84111

Daniel L. Caldwell
Rockwood Insurance Company
654 Main Street
Rockwood, Pennsylvania 15557

Susan Perry

ADDENDUM "N"

Jury Instruction 19A

INSTRUCTION NO. 19A

The law provides that a wrongful death action may be brought by either the estate of the deceased or the heirs of the deceased for the benefit of all of the heirs. Consequently, in deliberating what loss, if any, has been suffered by the death of the decedent in this case, you should consider the value of the decedent to all of her heirs, which include her children and husband. After you have determined the value of the loss of the decedent to all of the heirs, your verdict in this case should reflect only the proportion of any award to the individual loss suffered by the plaintiff.

ADDENDUM "O"

Jury Instruction on Punitive Damages

SEP 20 1991

SALT LAKE COUNTY

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANDREW JOHN STALBOERGER,	:	JURY INSTRUCTION ON
Plaintiff,	:	PUNITIVE DAMAGES
vs.	:	CIVIL NO. C-87-2830
THE PUTTER CLUB,	:	
Defendant.	:	

INSTRUCTION NO. 28

You are instructed to determine the amount of punitive damages which, in your judgment, would be reasonable and proper as punishment to the defendant for its misconduct and as a wholesome warning to others not to offend in like manner. You should keep in mind that they are only for the purpose just mentioned and not as a measure of compensatory damages which you have already awarded.

In determining the amount of punitive damages you should consider each of the following:

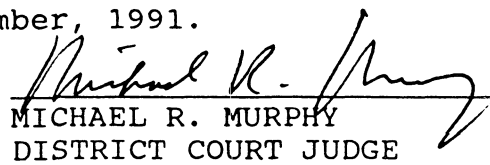
1. The nature of the defendant's misconduct;
2. The facts and circumstances surrounding the defendant's misconduct;
3. The effect of defendant's misconduct on the lives of the plaintiff and others;
4. The probability of future recurrence of the misconduct;
5. The amount of compensatory damages awarded;
6. The relative wealth of the defendant;
7. The relationship between the parties.

Punitive damages should be awarded with caution, but should be more than an inconvenience to the defendant and their amount should be sufficient to discourage the defendant and others, similarly situated, from doing or repeating such misconduct in the future.

The amount of any punitive damage award generally must bear a reasonable and rational relationship to the actual damages

you have already awarded.

Dated this 20th day of September, 1991.


MICHAEL R. MURPHY
DISTRICT COURT JUDGE

SEP 20 1991

SPECIAL VERDICT

SALT LAKE COUNTY
By Michael R. Dwyer
Deputy Clerk

We the jury award punitive damages in the following

amount:

\$ 100,000.00

DATED 20 day of September, 1991.

Michael R. Dwyer
Foreperson

001971

ADDENDUM "P"

Special Verdict

SEP 20 1991

By Marlene B. Ellis Deputy Clerk
SALT LAKE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANDREW JOHN STALBOERGER,	:	SPECIAL VERDICT
Plaintiff,	:	CIVIL NO. C-87-2830
vs.	:	
THE PUTTER CLUB,	:	
Defendant.	:	

LADIES AND GENTLEMEN OF THE JURY:

Please answer the following questions from a preponderance of the evidence. If you find the evidence preponderates in favor of the issue presented, answer it "yes." If, on any issue, you find the evidence so equally balanced that you cannot determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer it "no."

I.

(A) Did the Putter Club sell or supply alcoholic beverages to Joe Turpin when he was actually, apparently or obviously intoxicated?

ANSWER: Yes ✓ No

001964

(B) Did The Putter Club sell, deliver or furnish any liquor to Joe Turpin when he was intoxicated or apparently intoxicated?

ANSWER: Yes ✓ No

(C) If you answered "yes" to either I(A) or I(B), answer the following question:

Did The Putter Club or its employees know, or should they have known, that they were selling or furnishing alcoholic beverages to Joe Turpin or allowing Joe Turpin to consume alcoholic beverages when he was actually, apparently or obviously intoxicated, or when he was intoxicated or apparently intoxicated?

ANSWER: Yes ✓ No

(D) If your answer to I(C) was "yes," did Joe Turpin's consumption of liquor provided by The Putter Club cause him to become intoxicated?

ANSWER: Yes ✓ No

If each of your answers to I(A), (B) and (C) is "no," you need not answer the remaining questions.

II

(A) What amount of money would fairly and adequately compensate John Stalboerger for his damages suffered as a

001965

result of Marilyn Stalboerger's death?

ANSWER:

Special damages: \$ 237,000.00

General damages: \$ 250,000.00

(B) Were The Putter's Club's acts or omissions the result of conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of others?

ANSWER: Yes ☒ No ☐

Dated this 20 day of September, 1991.


FOREPERSON

ADDENDUM "Q"

Judgment

JUDGMENT

FILED
Third Judicial District

SEP 30 1991

Roger P. Christensen, #0648
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Plaintiff
175 South West Temple, Suite 510
Salt Lake City, Utah 84101
Telephone: (801) 355-3431

SALT LAKE COUNTY
By *Marlene Betts*
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

ANDREW JOHN STALBOERGER,

Plaintiff,

vs.

JOE B. TURPIN, REDWOOD INDUSTRIES,
INC. and THE PUTTER CLUB,

Defendants.

:
:
JUDGMENT
:
2168792
:
10-2-91-827am.
:
Civil No. 860900494
:
Judge Murphy
:
:
:

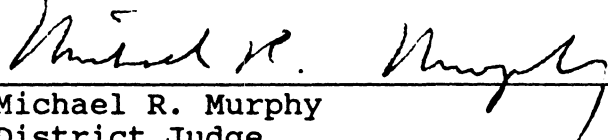
This action came on for trial, commencing on September 17, 1991 and concluding on September 20, 1991, before the court and a jury, with the Honorable Michael R. Murphy, District Judge, Presiding. The issues having been fully tried and the jury having rendered special verdicts finding the dramshop liability and punitive damage liability issues in favor of plaintiff and against defendant and awarding compensatory damages resulting to the plaintiff from the death of Marilyn Stalboerger of \$487,000.00 and further awarding punitive damages in the amount of \$100,000.00 in favor of plaintiff and against defendant;

It Is Ordered And Adjudged

That plaintiff, Andrew John Stalboerger, recover of the defendant, the Putter Club, (currently known as Totems), the sum of \$551,900.00, (representing the jury's verdict of \$587,000.00, less credits of \$32,100.00 and \$3,000.00 due to other payments previously received by plaintiff), together with interest on said amount of this judgment (\$551,900.00), at the rate of 12% per annum as provided by law, with said interest to commence running on the date hereof. Plaintiff is also awarded his costs of action.

DATED this 30th day of September, 1991.

BY THE COURT:


Michael R. Murphy
District Judge

ADDENDUM "R"

Remedy Matrix

REMEDY MATRIX

As The Putter Club has raised a number of significant issues, the following matrix is offered to aid the court in understanding the appellate relief requested:

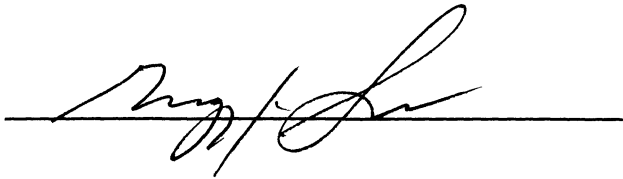
<u>If the Court Finds:</u>	<u>The Remedy Is:</u>
A. Stalboerger's release means what it says.	Reverse the judgment.
B. Stalboerger is bound by his election of remedies.	Reverse the judgment.
C. A credit should be given for the fraud case settlement.	Reverse the damage award by holding damages were settled 100% or at least give a credit of \$120,000.
D. The One Action Rule applies.	Reverse the judgment.
E. The Dram Shop Act does not provide for punitive damages.	Reverse and vacate the punitive damage award.
F. The punitive damage evidence was insufficient.	Reverse and vacate the punitive damage award.
G. The jury should have been told the amount of other settlements.	Reverse and remand for a new trial on damages.
H. The "send a message" argument was prejudicial.	Reverse and remand for a new trial or, at least, remand for a new trial on damages.

PUTTER\REMEDY.CHT

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 13th day of November, 1992, four true and correct copies of the foregoing ADDENDUM TO BRIEF OF THE APPELLANT was mailed, postage prepaid, to the following:

Roger P. Christensen, Esq.
CHRISTENSEN, JENSEN & POWELL, P.C.
175 South West Temple, Suite 510
Salt Lake City, Utah 84101

A handwritten signature in dark ink, appearing to read "Roger P. Christensen", is written over a horizontal line.